

TOWN OF SEARSPORT SHELLFISH CONSERVATION ORDINANCE

I. Authority

This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671.

II. Purpose

To establish a shellfish conservation program for the Town of Searsport that will insure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means that may include:

- A. Licensing
- B. Limiting the number of shellfish harvesters
- C. Restricting the time and area where digging is permitted
- D. Limiting the minimum size of clams taken
- E. Limiting the amount of clams taken daily by a harvester

III. Shellfish Conservation Committee

The Shellfish Conservation Committee appointed by the Board of Selectmen will administer the Shellfish Conservation Program for the Town of Searsport. The Committee's responsibilities include:

- A. Establishing annually in conjunction with the State Department of Marine Resources (DMR) the number of shellfish digging licenses to be issued.
- B. Surveying each clam producing area at least once each three years to establish size distribution and density and annually estimating the status of the Town's shellfish resources.
- C. Submitting to the Board of Selectmen proposals for the expenditures of funds for the purpose of shellfish conservation.
- D. Keeping this Ordinance under review and making recommendations for its amendment.
- E. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas and closed areas that are conditionally opened by the DMR.
- F. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the DMR Area Biologists.
- G. Submitting an annual report to the Town and the DMR covering the above topics and all other Committee activities.
- H. Assist the monitoring of all open flats.

IV. Definitions

- A. Resident: The term "resident" refers to a person who has been domiciled in this municipality for at least three months next prior to the time his or her claim of such residence is made.
- B. Non-Resident: The term "non-resident" means anyone not qualified as a resident under this Ordinance.
- C. Shellfish, Clams and Intertidal Shellfish Resources: When used in the context of this Ordinance the words "shellfish" and "intertidal shellfish resources" mean soft-shell clams (*Mya arenaria*), quahogs and surf clams and oysters. "Clams" mean soft-shell clams, quahogs and surf clams and razor clams.
- D. Municipality: Refers to the Town of Searsport, Maine.

V. Licensing

Municipal Shellfish Digging License is required. It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this Ordinance. The licensee must sign the license in order to be valid.

A. Designation, Scope and Qualifications

- 1) Residential Recreational Shellfish Annual License: The license is available to residents of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for his or her personal use.
- 2) Non-resident Recreational Shellfish Annual License: The license is available to any person not a resident of this municipality and entitles the holder to dig and take not more than one peck of shellfish in any one day for his or her personal use.
- 3) Recreational Shellfish seventy-two hour license: The license is available to any person and entitles the holder to dig and take not more than one peck of shellfish in any one day for his or her personal use.
- 4) Anyone who has a valid State of Maine Commercial Shellfish license or their local license suspended within the last five years may not purchase a Recreational License to harvest shellfish in Searsport.

B. Application Procedure

Any person may apply to the Town Clerk for the licenses required by this Ordinance on forms provided by the municipality, which include details of the license terms.

- 1) Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, signature and additional information as the municipality may require. The applicant must show some form of identification as a Searsport resident to obtain a resident license.
- 2) Misrepresentation: Any person who gives false information on a license application will cause said license to become invalid and void.

C. Fees

The Board of Selectmen shall set the fees for the licenses (upon recommendation of the Shellfish Committee) as they deem appropriate and shall accompany in full the application for the respective license. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation and enforcement.

D. Limitation of Diggers

Clam resources vary in density and size distribution from year to year and over the limited shellfish producing area of the Town. It is essential the Town carefully husband its shellfish resources. Following the annual review of the Town's shellfish resources, size distribution and abundance, the Shellfish Conservation Committee shall, in consultation with the DMR Area Biologist, determine whether limiting commercial or recreational shellfish licenses is an appropriate shellfish management option for the following year.

- 1) Prior to May 1, the Committee shall report its findings and document recommendations for the allocation of commercial and recreational licenses to be made available for the following license year to the state Commissioner of Marine Resources for concurrence.
- 2) After receiving approval of the proposed license allocations from the Commissioner of Marine Resources, and prior to May 15, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the number and allocation of shellfish licenses to be issued.
- 3) Not less than 10 days prior to the period of issuance, notice of the number of licenses to be issued and the procedure for application must be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation that the municipal officers

consider effective in reaching individuals affected, and must be posted in the municipal offices until the period of issuance concludes.

4) The Town Clerk shall issue licenses as allocated from June 1 and until August 31, after which licenses shall be issued on a first-come first-served basis.

5) Licenses may be returned to the Town voluntarily, and reissued to another person at the current fee according to the priorities established herein.

E. License Expiration Date

Each license issued under authority of this Ordinance expires at midnight on the May 31st next following the date of issuance, with the exception of the seventy-two hour license.

F. Fee Waiver

Recreational shellfish license fees will be waived for applicants 65 years or older and 12 years or younger. Children ages 12 years and younger do not need a license and but may help a licensed adult harvest one peck of shellfish. Fee waivers do not apply to 72 hour licenses. Non-resident seniors may apply after August 31st.

G. Conservation Benefit

Searsport shellfish license holders who have purchased their licenses during the period of issuance of the previous year and who have completed ten hours of conservation work under the supervision of the Shellfish Conservation Committee shall receive complimentary licenses.

H. Suspension

Any shellfish licensee having one conviction for a violation of this ordinance shall have his or her shellfish license automatically suspended for a period of 30 days.

1) A licensee whose shellfish license has been suspended pursuant to this Ordinance may reapply for a license only after the suspension period has expired.

2) The suspension shall be effective from the date of mailing of a Notice of Suspension by the Town Clerk to the Licensee.

3) Any licensee whose shellfish license has automatically been suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written Request for Hearing with the Town Clerk within 30 days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee to the Board of Appeals by filing a written Request for Appeal with the Town Clerk within 7 days of the decision of the Shellfish Conservation Committee.

VI. Opening and Closing of Flats

The Board of Selectmen, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the DMR Area Biologist that the status of shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed, the Board of Selectmen may call a public hearing, and if so, shall send a copy of the notice to the DMR.

VII. Minimum Legal Size of Soft Shell Clams

It is unlawful for any person to possess soft-shell clams within the Town of Searsport, County of Waldo, which are less than two inches in the longest diameter except as provided by Subsection B of this section.

A. Definitions

1) Lot: The word "lot" as used in this Ordinance means the total number of soft shell clams in any bulk pile.

Where soft-shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.

2) Possess: For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy and sell retail and wholesale soft shell clam shellstock.

B. Tolerance

Any person may possess soft-shell clams that are less than two inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one peck nor more than four pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one peck.

C. Penalty

Whoever violates any provision of this section shall be punished as provided by 12 MRSA Section 6681.

VIII. Harvesting

Clams may only be harvested during daylight hours. Similar to hunting regulations, this would mean one half hour before sunrise and one half hour after sunset.

IX. Penalty

A person who violates this Ordinance shall be punished as provided by 12 MRSA Section 6671 (10).

X. Enforcement

A Town Shellfish Warden shall be appointed by the Board of Selectmen to enforce provisions of this Ordinance.

XI. Effective Date

This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy is filed with the Commissioner within 20 days of its adoption.

XII. Period of Ordinance

This Ordinance shall remain in effect until repealed by the municipality or rescinded by the Commissioner of Marine Resources.

XIII. Severability

If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

XIV. Repeal

Any Ordinance regulating the harvesting or conservation of shellfish in the Town, and any provisions of any other Town Ordinance which are inconsistent with this Ordinance, are hereby repealed.

This Ordinance was submitted to the voters of the Town of Searsport at a Special Town Meeting on December 6, 2001 and shall be deemed effective that date.

~Revised May 15, 2004

~Revised March 10, 2011

~Revised March 10, 2012

~Revised March 8, 2014

This is a true and attested copy